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Publication of the draft of Japan's first human rights due diligence (HRDD) guidelines

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1. Introduction

On August 8, 2021, the Ministry of Economy, Trade and Industry (METI) released the "Guidelines on Respect for Human Rights in Responsible Supply Chains (Draft)" (hereinafter referred to as the "Draft Guidelines"), the first guidelines in Japan outlining the efforts required of Japanese companies to respect human rights amidst a more active international debate on corporate responsibility regarding human rights violations in business activities, and setting out a framework of human rights due diligence (HRDD) for Japanese companies.¹

The Draft Guidelines were compiled through discussions in the "Study Group on Guidelines for Respecting Human Rights in Supply Chains," which was established by METI in March of this year, and in which I participated as a member, as well as through exchanges of opinions with international organizations. The Draft Guidelines will be open for public comment until August 29 of this year, after which they will be officially adopted by the government. Therefore, please note that the contents may be changed based on the public comment and the government's discussion afterward.

Additionally, METI is currently preparing a document providing more concrete and practical details in relation to respect for human rights, and the content of this document will be closely watched.

2. Summary of the Draft Guidelines

(1) Framework of the Draft Guidelines

The Draft Guidelines were developed as guidelines based on the Japanese government's 2020 National Action Plan on Business and Human Rights (NAP), in line with the international standards such as the OECD Guidelines for Multinational Enterprises (OECD Guidelines for Multinational Enterprises). The Draft Guidelines recommend that companies take the following three major actions: establishing a human rights policy; conducting HRDD; and establishing remedies.

Although the Draft Guidelines are not mandatory and there are no sanctions for failure to comply, once the official guidelines are enacted, the implementation of HRDD will be evaluated based on the official guidelines.

i. Establishing a human rights policy

The Draft Guidelines recommend that the human rights policy meet the following five requirements, and they encourage dialogue and consultation with internal departments and stakeholders when considering the policy (Draft Guidelines 3).

- a) It is approved at the most senior level of the business enterprise.
- b) It is informed by relevant internal and/or external expertise.
- c) It stipulates the business enterprise's human rights expectations of personnel, business partners and

¹ The provisional English translation can be found at the following link:
<https://www.meti.go.jp/policy/economy/business-jinken/guidelines/guidelines.pdf>

- other parties directly linked to its operations, products or services.
- d) It is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties.
- e) It is reflected in the operational policies and procedures necessary to embed it throughout the business enterprise.

ii. Conducting HRDD

The Draft Guidelines recommend that companies conduct HRDD covering their supply chain by the process set out below. They also state that the HRDD process should be conducted periodically, as well as prior to a new activity or business relationship, prior to major decisions or changes in the operation, and in response to or anticipation of changes in the operating environment.

a) Identification of the business fields with material risks

Companies should consider risk factors such as sector risks, product/service risks, geographic risks, and enterprise-level risks, and identify business areas where adverse human rights impacts are high and risks are significant. Companies should then identify how adverse human rights impacts occur at each process of the company's business (Draft Guidelines 4.1.1).

b) Prioritization

As for the identified adverse human rights impacts, companies should prioritize the response, based on the scale, scope, and irremediability of the severity of the adverse human rights impact (Draft Guidelines 4.1.3).

c) Measures to be taken to prevent or mitigate adverse human rights impacts

If a company's business activities cause or contribute to adverse human rights impacts, the company is required to take measures to prevent or mitigate such impacts (Draft Guidelines 4.2.1.1). On the other hand, if a company's business does not cause or contribute to adverse impacts but there is a direct link between its operations and adverse human rights impacts, the company should still strive to prevent or mitigate the adverse impacts by using its leverage on the entities that cause or contribute to the adverse impacts, depending on the situation (Draft Guidelines 4.2.1.2).

The Guidelines also state that disengagement should be considered as a last resort because the adverse impact itself may not be remediated by disengagement, and the adverse human rights impacts could further worsen, due to the possibility of unemployment of the company's employees as a result of worsening the financial status of the company (Draft Guidelines 4.2.1.3).

d) Tracking effectiveness of the efforts

Companies need to identify and assess adverse human rights impacts and evaluate the status of measures such as prevention and mitigation, through audits of suppliers and other means (Draft Guidelines 4.3).

e) Information disclosure

Companies should publicly provide information to stakeholders on how they will address adverse human rights impacts at least once a year, and the content of this information should be sufficient to evaluate whether the company's action to address the specific human rights impact involved was appropriate (Draft Guidelines 4.4).

In addition, the Draft Guidelines also note the following points.

- In conducting HRDD, special attention should be paid to vulnerable stakeholders (e.g., technical intern trainees) because they are more likely to be affected by severe adverse impacts (Draft Guidelines 4.1.2.2).
- In conflict-affected areas, HRDD should be conducted in accordance with high risks, given the possibility that corporate activities may unintentionally contribute to conflicts and the need for consideration of "responsible withdrawal" when withdrawing from the areas (Draft Guidelines 4.1.2.4, 4.2.2).
- Companies are also expected to make efforts to address the risks of systemic issues (such as discrimination against minority groups, which are driven by root causes outside of the company's control) (Draft Guidelines

4.2.3).

iii. Remedies (grievance mechanism)

The Draft Guidelines recommend that companies establish a grievance mechanism or participate in a grievance mechanism established by an industry organization or others to enable individuals or groups to show concerns and seek a remedy for any adverse impacts caused by the company (Draft Guidelines 5.1).

3. Future Required Actions Required by Companies

In accordance with the Draft Guidelines, companies should (1) establish a human rights policy, (2) conduct HRDD, and (3) establish a grievance mechanism. For companies that are starting their HRDD efforts, it is important to establish primary priority areas in their supply chain as a first step to prioritize their efforts. It is also beneficial for companies that have already started their efforts to review their own efforts in light of the Draft Guidelines.

In relation to human rights risks, import restrictions based on the U.S. Uyghur Forced Labor Prevention Act (UFLPA) went into effect on June 21 of this year, and the UFLPA Strategy², which outlines enforcement measures in relation to the said law, has been published. In relation to products exported to the U.S., it is necessary to take measures taking into consideration enforcement of the UFLPA.

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² <https://www.dhs.gov/uflpa-strategy>

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